IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII Rule 32(2) (b)

Description of the case.

W.P. No. 1748 (S/S) of 2001

(Old No. 39641/1993)

Date of decision :- 06/9/2006

A.F.R. (Approved for reporting)

~~Not approved for reporting~~

Date :- 06/9/2006 Initials of Judge

Note :- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL, AT NAINITAL

Civil Misc. Writ Petition No. 1748 (S/S) of 2001

U.P. P.W.D. Employees Union,
10, Vidhan Sabha Marg, Lucknow and 12 others …Petitioners

Versus

The State of Uttaranchal and 3 others … Respondents

Mr. P.C. Jhingan, learned counsel for the petitioners.
Mr. N.P. Sah, learned Standing Counsel for the respondents/State

Per Hon'ble J.C.S. Rawat, J.

1. By means of this Writ Petition, moved under Article 226 of the Constitution of India, the petitioner has sought the following reliefs :-

> "i) To issue a writ or direction in the nature of certiorari, quashing the U.P. Govt. Order No. 6732/23-4-89/145-NG/88 dated 12th February, 1990, referred to in Annexure-I and the Office Order/letter No. 1000-Vyag-Sha/764-Vyag/82, Lucknow dated 18th September, 1991, (Annexure-I to this writ petition).
>
> ii) To issue a writ, order or direction in the nature of mandamus commanding the respondents to lift the bar of maximum wages at Rs. 1200/-, Rs. 1600/, Rs. 1800/- and Rs. 2200/- in the various pay scales referred to in the letter/Office Order dated 18th September, 1991 (8Annexure-I to this writ petition).
>
> iii) To issue any other suitable writ, order or direction, which this Hon'ble Court may deem fit and proper in the circumstances of the case.
>
> iv) To award the cost of the writ petition to the petitioners."

2. By means of this writ petition, the petitioners have sought that the Government Order dated 12th February, 1990 referred in the letter dated 18th September, 1991 in which the maximum limit of total wages including dearness allowance have been fixed to Rs. 1200/- of those employees whose scale of pay is Rs. 750-12-870-EB-14-940 and Rs. 775-12-995-EE-14-1025, Rs. 1600/- maximum is fixed for pay scales

of Rs. 825-15-900-EB-20-1200 and Rs. 950-20-1150-EB-25-1500 and Rs. 1800/- maximum is fixed for the pay scale of Rs. 975-25-1150-EB-30-1660 and Rs. 1400-40-1800-EB-50-2300 and Rs. 2200/- is fixed as maximum limit for the pay scale of Rs. 1600-50-2300-EB-60-2600. It was further alleged that the enhancement of the dearness allowance and was revision was a result of the recommendation of the 4th Pay Commission which ought to have been implemented in full and by the impugned order the maximum emoluments have been fixed and the petitioners had been deprived from the total benefit of the recommendation of the 4th Pay Commission while the regular and permanent employees in the said department are getting full benefit of the recommendation of the 4th Pay Commission. It was further alleged that the said G.O. by which the limit have been fixed by the Government is a discriminatory as it has been issued for freezing of total wages of the work charge employees who have been deprived from the recommendations of the IVth pay Commission and thus the freezing of maximum emoluments at a definite amount is most unreasonable and against the constitutional rights of the petitioners. The petitioners had not been granted the pay scale of those similarly situated employees who had been working on the regular and permanent post of the department. Thus the petitioners are entitled to get the same salary which their permanent and regular counterparts had been getting on the basis of doctrine of equal pay for equal work. Hence, this petition has been field before this court.

3. Heard Sri P.C,. Jhingan, learned counsel for the petitioner, Sri N.P. Sah, learned Standing Counsel for the respondents/State and perused the record.

4. Learned counsel for the petitioners contended that the concept of equal pay for the equal work would be applicable to the petitioners. The petitioners are working as a work charge employees and their counterparts who had been working as permanent employees, they are getting the regular pay scale as recommended by the 4th Pay Commission. Thus the G.O. is discriminatory in nature. Learned Standing Counsel refuted the contention. It is not disputed that the petitioner are work charge employees and they are daily wagers. The petitioners had nowhere alleged that their services have been regularized by any order passed by the Government. The concept of equal pay for the equal work is different form the concept of conferring permanency on those who have been appointed on daily wages basis. The court had in various decisions applied the principle of equal pay for equal work and laid down the parameters on that principle. The decisions are rested on the concept of equality enshrined in our Constitution in the light of the directive principles in that behalf. But the acceptance of that principle cannot lead to a position where the court could direct that appointments made without following the due procedure established by law, be deemed permanent or issue directions to treat them as permanent for the purposes of the salary. By doing so, would be negation of the principle of equality of opportunity. The persons who are skilled, working as a daily wagers, cannot claim parity with their counterparts who are working permanently in the department. When ad hoc appointments or engagement of daily wager are made, the appointees know the nature of their employment and they accept the employment with eyes open. It may be true that they are not in a position to bargain. Since they might have

been searching for some employment so as to eke out their livelihood and accepts whatever they get. It would not be just and proper to treat the employees working on daily or ad hoc basis at par with those who are permanent employees of the department. It has been held in **Secretary, State of Karnataka & others Vs. Umadevi & Others** reported in **2006 AIR SCW p/1991** that if any persons had been appointed on the daily wages, casual wages or on ad hoc appointment, they cannot claim to be permanent on the expiry of his term of appointment. The Hon'ble Apex Court have also clarified that merely because of a temporary employee or a casual wage worker or ad hoc employees had been continuously working for long time, he cannot be absorbed in the regular service and he cannot claim to be regularized. It has been held in the case of Umadevi (Supra) at para 39 and 41 as follows :

> *"39. It was then contended that the rights of the employees thus appointed, under Articles 14 and 16 of the Constitution, are violated. It is stated that the State has treated the employees unfairly by employing them on less than minimum wages and extracting work from them for a pretty long period in comparison with those directly recruited who are getting more wages or salaries for doing similar work. The employees before us were engaged on daily wages in the department concerned on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate, and made permanent in employment, even assuming that the principle could be invoked for claiming equal wages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to*

be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only be making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employee. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. The arguments based on Articles 14 and 16 of the Constitution are therefore overruled.

40. ……

41. It is argued that in a country like India where there is so much poverty and unemployment and there is no equality of bargaining power, the action of the State in not making the employees permanent, would be violative of Article 21 of the Constitution. But the very argument indicates that there are so many waiting for employment and an equal opportunity for competing for employment and it is in that context that the Constitution as one of its basic features, has included Articles 14, 16 and 309 so as to ensure that public employment is given only in a fair and equitable manner by giving all those who are qualified, an opportunity to seek employment. In the guise of upholding rights under Article 21 of the Constitution, a set of persons cannot be preferred over a vast majority of people waiting for an opportunity to compete for State employment. The acceptance of the argument on behalf of the respondents would really negate the rights of the others conferred by article 21 of the Constitution, assuming that we are in a position to hold that the right to employment is also a right coming within the purview of Article 21 of the Constitution. The argument that Article 23 of the Constitution is breached because the employment on daily wages amounts to forced labour, cannot be accepted. After all, the employees accepted the employment at their own volition and with eyes open as to the nature of their employment. The Governments also revised the minimum wages payable from time to time in the light of all relevant circumstances. It also appears to us that importing of these theories to defeat the basic requirement of public

employment would defeat the constitutional scheme and the constitutional goal of equality."

5. Thus it is apparent from the record that the petitioners are working as work charge employees and they are not the regular employees of the department and they are working on the daily wages. Thus the employees who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. As such, no right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited persons and made permanent in the employment even assuming that the principle could be invoked for claiming equal wages for equal work. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. The government was justified in issuing the order to fix an amount as a wages to the work charge employees. It has been noticed that the government had time to time revised the wages of the daily wagers keeping in mind the inflation prevalent in the society. When any person is appointed as daily wager or ad hoc employee, he knows the nature of his appointment and the wages he would get after his engagement. He accepts the employment knowing the consequence of the employment. He also knows that he had been appointed by the appointing authority without any process being undertaken for selection and he had deprived a number of persons who were aspirant of the employment. He very well knows that he had got the employment with the sympathy of the appointing authority. Thus, he would be ready to face the consequences of the

employment which he had received in relaxation of the authorities and behind the back of constitutional scheme. Thus such, employees whose induction in the service is itself against the constitutional scheme, create a class itself and they cannot claim parity with the duly appointed employees under the constitutional scheme. Thus the arguments based on the Article 14 and 16 of the Constitution as advanced by the learned counsel for the petitioners are thereof overruled.

6. In view of the foregoing discussion, this writ petition devoids of merit is liable to be dismissed and is dismissed accordingly. Cost easy.

7. All applications pending in this case are stand disposed of in terms of the judgment.

(J.C.S.Rawat, J.)

06th September, 2006
Shiv